

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

REGINALD M. CLYTUS
Petitioner,

v.

Case No. 10C0696

**MICHAEL BAENEN, warden at
Green Bay Correctional Institution¹
Respondent.**

ORDER

Petitioner Reginald Clytus filed this petition for habeas corpus pursuant to 28 U.S.C. § 2254, asserting that his state court sentence violated the constitution due to the court's failure to explain the basis for his sentence. The Antiterrorism and Effective Death Penalty Act requires that habeas petitioners present their federal claims in state court and exhaust their available state court remedies before seeking relief. 28 U.S.C. § 2254(b)(1)(A). Petitioner failed to raise his claim on direct appeal and thus respondent moved to dismiss the petition for failure to exhaust (or in the alternative for procedurally defaulting the claim). Petitioner responded by filing a motion to hold his petition in abeyance while he pursued post conviction relief in state court. Wisconsin allows a prisoner to collaterally attack his conviction by raising issues that could have been raised on direct appeal if he can demonstrate a sufficient reason to excuse his failure to raise them previously. Wis. Stat. § 974.06(4); State v. Escalona-Naranjo, 185 Wis. 2d 169, 173 (1994). Petitioner

¹ William Pollard was named as the respondent in past filings on this matter; however, the caption should be amended to reflect that Michael Baenen is now the current warden at Green Bay Correctional Institution.

contended that he was already utilizing this procedure in state court by claiming that ineffective assistance of counsel prevented him from raising the claims. I granted the motion and stayed the case. Respondent now moves to lift the stay and to dismiss the petition.

Reviewing the materials provided by respondent, it has become clear that petitioner is not attempting to exhaust the remedies available in state court, but instead has raised totally different claims regarding the legality of his guilty plea. Even though eight months have passed, petitioner has not taken any action to exhaust the claim raised in this petition. As a result, I will lift the stay and grant the motion to dismiss.

IT IS THEREFORE ORDERED that the stay is **LIFTED** and that this case is **DISMISSED WITHOUT PREJUDICE**.

Dated at Milwaukee, Wisconsin this 24th day of August 2011.

s/_____
LYNN ADELMAN
District Judge